

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

**Westown Associates, LLC,**  
Petitioner-Appellant,

v.

**City of Ames Board of Review,**  
Respondent-Appellee.

**ORDER**

**Docket No. 09-100-0753**  
**Parcel No. 09-11-250-055**

On July 27, 2010, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant, Westown Associates, LLC, submitted evidence in support of its petition and was represented by Attorney Timothy Hogan of Hogan Law Firm, Des Moines. The Board of Review designated Ames City Attorney Doug Marek as its legal representative. The Board of Review submitted evidence in support of its decision. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

*Findings of Fact*

Westown Associates, LLC (Westown) appeals from the City of Ames Board of Review decision reassessing its property located at 205 SE 5th Street, Ames, Iowa. According to the property record card, the subject property consists of a 22,000 square-foot industrial building on a 3.89 acre site. The real estate was classified as commercial on the initial assessment of January 1, 2009, and valued at \$1,600,000, representing \$978,400 in land value and \$621,600 in improvement value.

In a questionable procedure, Ames City Assessor Gregory Lynch petitioned the Board of Review to correct an alleged error in his own initial 2009 assessment. He requested the \$621,600

building value be removed and the land value be increased by the same amount, maintaining a total value of \$1,600,000.<sup>1</sup> Lynch claimed the building was nearly demolished at the time the Board of Review was in session and a building permit had been issued for construction of a PETCO building. In his opinion, the shift of value to the land portion was justified because the subject's land value had not been increased by the Lincoln/Duff corridor land reassessment as it had for other nearby properties. The Board of Review granted his request.

Westown was not aware of the assessor's protest, was not notified of the Board of Review hearing date in advance, and was given no opportunity to participate in the hearing. It was first notified of the change by a Notice to Property Owner after the decision was made. The letter included procedures for an appeal to this Board or the District Court.

Westown following the procedure indicated in the letter by the Board of Review, appealed to this Board asserting the total assessed value should be reduced to \$600,000. It basically asserted claims based on inequitable assessment under Iowa Code section 441.37(1)(a) and over-assessment under 441.37(1)(b) to challenge the Board of Review decision. In a separate ruling on a motion to dismiss filed by the Board of Review, this Board determined that since Westown had not initially protested the total \$1,600,000 assessed value of the property, the sole issue for this appeal would be the allocation between land and improvement value.

Steve Scott, a partner in Westown, testified the property was purchased for \$1,600,000 from the State of Iowa in 2007. Westown planned to redevelop the property by leasing the existing building back to the State or to another tenant for warehouse use. Contrary to the assessor's contentions, Scott testified the building was not demolished before January 1, 2009, and there were no approved plans for construction of a PETCO building on the site. He reported an aquifer running under nearby Duff Avenue, proximity to the city water well field, and enactment of new water detention requirements

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<sup>1</sup> Although the instant appeal deals with only the 2009 assessment, it appears the improvement value was similarly shifted to land value in the 2008 assessment as well.

limited development opportunities. These changes required location of the originally planned new construction to the opposite side of the property, which in turn rendered the existing building unusable and in Scott's opinion, resulted in a reduced land value.

Westown's evidence shows the application for excavation and disconnection of utilities was not granted until March 16, 2009. Also a lien waiver of the contractor completing the demolition indicates a September 2009, completion date. Thus, the demolition took place between March and September 2009 supporting Westown's claim the building was intact on the assessment date. Scott also testified Westown did not have an approved site plan, which would be the basis for a building permit. We find Scott's testimony to be forthright and credible.

Scott also testified that most sites in the area are assessed in the range of \$4.00 per square foot, while Westown land is assessed at \$9.44 per square foot. He gave examples of two other nearby properties whose assessed land value was increased by a corresponding reduction in the assessed improvement value similarly to the Westown reassessment.

Since neither the assessor nor his staff testified, it is unclear why these mechanical adjustments were warranted or whether they resulted in the actual and fair market value of each property.

Reviewing the entire record, we find the preponderance of the evidence establishes the Board of Review's allocation of value between the subject property's land value and the improvement value is incorrect. Assessors and local boards of review are required to value real estate as of January 1 of the year in which the assessment is made. Iowa Code § 428.4; Iowa Admin. Code r. 701-71.2(1-2). The value of improvements on the subject property was removed improperly and prematurely, since demolition was not even begun until well after January 1, 2009. Any change in value subsequent to January 1, 2009, should be reflected in the next reassessment.



### *Conclusion of Law*

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a). City and county assessors are required to value real estate as of January 1 of the year in which the assessment is made. § 428.4; Iowa Admin. Code r. 701-71.2(1-2). Changes made after January 1, such as valuation changes resulting from new construction or the removal of buildings, are to be listed and assessed to the owner the following year. IOWA DEPARTMENT OF REVENUE, DUTIES AND RESPONSIBILITIES OF ASSESSORS, 8 (2008), [http://www.iowa.gov/tax/locgov/prop\\_assessor\\_duties.pdf](http://www.iowa.gov/tax/locgov/prop_assessor_duties.pdf).

Since demolition of the building was not completed as of January 1, 2009, its value should not have been removed from the assessment until the subsequent year's reassessment.

Therefore, we modify the Westown's property assessment as determined by the Board of Review. The Appeal Board determines that the property assessment value as of January 1, 2009, is \$1,600,000, representing, \$978,400 in land value and \$621,600 in improvement value.

THE APPEAL BOARD ORDERS that the January 1, 2009, assessment as determined by the City of Ames Board of Review is modified as set forth above.

Dated this 3<sup>rd</sup> day of August 2010.

Jacqueline Rypma  
Jacqueline Rypma, Presiding Officer

Karen Oberman  
Karen Oberman, Board Chair

Richard Stradley  
Richard Stradley, Board Member

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>8/31</u> , 20 <u>10</u>	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u>[Signature]</u>